

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,) File No. 20-MJ-222
) (DTS)
Plaintiff,)
) Minneapolis, Minnesota
vs.) March 24, 2020
) 1:45 p.m.
Muhammad Masood,) Courtroom 9E
)
Defendant.)

BEFORE THE HONORABLE DAVID T. SCHULTZ
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE
(DETENTION HEARING)

APPEARANCES

For the Plaintiff: Assistant United States Attorney
ANDREW WINTER, AUSA
300 South Fourth Street
Suite 600
Minneapolis, Minnesota 55415

For the Defendant: Law Office of Jordan S. Kushner
JORDAN S. KUSHNER, ESQ.
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Court Reporter: MARIA V. WEINBECK, RMR-FCRR
1005 U.S. Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415

Proceedings reported by court reporter; transcript produced by computer.

P R O C E E D I N G S

IN OPEN COURT

(1:45 p.m.)

THE COURT: Good afternoon. Please be seated.

9 MR. WINTER: Good afternoon, Your Honor. Andrew
10 Winter appearing on behalf of the United States.

11 THE COURT: Good afternoon, Mr. Winter. And for
12 the defendant?

13 MR. KUSHNER: Good afternoon. Jordan Kushner
14 representing Mr. Masood.

15 THE COURT: Good afternoon, Mr. Kushner.

16 Let's start, first of all, before I find out or be
17 brought up to speed, let me make sure Mr. Masood can see and
18 hear me. Can you hear me, Mr. Masood?

19 | THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. And can you see me on the
21 screen?

22 | THE DEFENDANT: Yes, sir.

23 THE COURT: Can you hear and see both the
24 prosecutor, Mr. Winter, if you will raise your hand. Can
25 you see him?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And can you see Mr. Kushner, your
3 attorney?

4 THE DEFENDANT: I can partially see him.

5 THE COURT: Why don't you come over to this side
6 of the table if you would, Mr. Kushner. Thank you.

7 THE DEFENDANT: All right. Thank you.

8 THE COURT: We're just rearranging some furniture
9 here. Bear with us.

10 All right. Can you see Mr. Kushner now?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay, all right. So I understand,
13 Mr. Kushner, you are privately retained; is that correct?

14 MR. KUSHNER: That's correct.

15 THE COURT: All right. And, Ms. Atwal, are you
16 formally withdrawing or how are we proceeding with
17 representation?

18 MS. ATWAL: Your Honor, now that Mr. Kushner has
19 filed a certificate, the public defender would be
20 discharged.

21 THE COURT: Okay. Very well. We are here for a
22 preliminary and detention. However, are we waiving that?
23 Is that correct, Mr. Kushner?

24 MR. KUSHNER: That's correct, Judge.

25 THE COURT: Okay. All right. With that, let me

1 inquire and make sure that the defendant is making a knowing
2 and voluntary waiver.

3 Mr. Masood, I know that you have been speaking
4 with your lawyers. You have a right to have a hearing on
5 the issue of whether there is probable cause in the Criminal
6 Complaint to support the charges and also a right to a
7 hearing on whether you shall be detained pending the trial
8 on those charges should there be probable cause found. You
9 have that right to a hearing. You have the right to
10 confront witnesses to it.

11 Your attorney is advising the Court that you wish
12 to waive the right to the hearing and go forward straight to
13 the rest of the process. And I want to make sure that you
14 are in fact agreeing to waive your hearing both on detention
15 and on probable cause. Are you doing that, sir?

16 THE DEFENDANT: I'm waiving detention and --
17 (indiscernible).

18 THE COURT: The answer is yes?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. I'm sorry to make you do this
21 but just for the sake of record, is there a microphone near
22 you? Can you see a microphone?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. And I just need you to repeat
25 your answer, so it's audible, so we can make sure that it's

1 accurately recorded. Are you agreeing to waive your right
2 to a hearing on pretrial detention and on probable cause at
3 this juncture?

4 THE DEFENDANT: Sir, I really don't --

5 Mr. Kushner, (indiscernible), I didn't hear that, so one
6 more time?

7 THE COURT: I'm sorry, Mr. Masood, I can't quite
8 make out what you're saying.

9 THE DEFENDANT: Sir, Mr. Kushner, my lawyer he
10 screwed up. He said something. I need to rehear that.

11 THE COURT: Do you need to consult with your
12 client, Mr. Kushner?

13 THE CLERK: Mr. Kushner, will you speak into the
14 microphone?

15 THE COURT: Use the microphone.

16 MR. KUSHNER: Mr. Masood, are you able to hear me
17 clearly now? Can you hear me clearly?

18 THE DEFENDANT: Yes, sir.

19 MR. KUSHNER: So when I stood up, I was confirming
20 for the Judge that you were waiving your right to a hearing
21 on probable cause and detention. And now he's asking you to
22 confirm that you're waiving that right, and he didn't hear
23 your answer. So can you confirm that you're waiving the
24 right, that you're waiving your rights?

25 THE DEFENDANT: Yes, sir. Yes, I am doing that.

1 THE COURT: Okay, thank you, Mr. Kushner. Thank
2 you, Mr. Masood. One last question for you, sir. Is anyone
3 making any threats against you or making any promises to you
4 to get you to waive your rights to those preliminary
5 hearings and detention hearings?

6 THE DEFENDANT: No, sir.

7 THE COURT: Okay. Very well. Thank you,
8 Mr. Masood. I find that the defendant has made a knowing
9 and voluntary waiver of the right to a detention hearing and
10 a preliminary hearing.

11 Is there anything further at this time for the
12 government, Mr. Winter?

13 MR. WINTER: Just, Your Honor, I wanted to just
14 briefly touch on, just get confirmation from newly appointed
15 counsel, or counsel for Mr. Masood, that he's willing to
16 abide by the order that was just filed on I believe it was
17 Friday -- Thursday or Friday.

18 THE COURT: General Order Number 3? Or the
19 Protective Order? The Protective Order.

20 MR. WINTER: The Protective Order. And we've had
21 a conversation, and I believe that he's prepared to agree to
22 that. And if we've got logistics issues, we're going to
23 work with Mr. Kushner on that.

24 MR. KUSHNER: Judge, I just got a copy of the
25 Protective Order before when I came to court. I have not

1 had a chance to read through the entire Order yet. I have
2 no problem in principle with agreeing to a Protective Order
3 to keep information confidential, and so what I can tell you
4 is if I find any problems with it, I'll bring it to the
5 attention of the Court but will not disobey it.

6 There is one problem with the Protective Order
7 that Ms. Atwal brought my attention to that I think needs to
8 be corrected. Does the Court want to hear about that?

9 THE COURT: Sure, I'll hear about that now, but,
10 Mr. Winter, you were going to say something?

11 MR. WINTER: Well, Your Honor, the Motion and
12 Order is under seal.

13 THE COURT: Right.

14 MR. WINTER: What I would prefer is simply we can
15 do this through the Court, but do it continued under seal.

16 THE COURT: Yes, I don't know what you're issue
17 will be, so in an abundance of caution perhaps we should do
18 it through the ECF procedure under seal, and see if we can
19 resolve whatever the issue is. Okay?

20 MR. KUSHNER: I think it's going to be resolved.
21 I just wanted to put it on the record to protect myself.

22 Mr. Winter is familiar with the issue. Is it okay if I just
23 put the specific issue on the record?

24 MR. WINTER: Yes, I think the narrow issue is
25 fine, Your Honor.

1 THE COURT: Okay, hang on, everyone. Go on over
2 to the podium, Mr. Kushner.

3 Mr. Masood, were you able to hear all of that
4 interchange?

5 THE DEFENDANT: Sir, I missed some of what
6 Mr. Winter is saying. (Indiscernible) some of that I think
7 I'm fine with that. Let's proceed.

8 THE COURT: Okay. Let me just summarize just to
9 make sure everybody is on the same page. So the only other
10 issue that was raised was Mr. Winter wanted to make sure
11 that Mr. Kushner your lawyer was agreeing to abide by
12 certain orders of the Court. Mr. Kushner has a concern
13 about one aspect of one of those orders, and he's about to
14 put that on the record, and the Court will resolve that
15 concern in due course. Okay?

16 It's not a matter that effects the proceedings
17 today nor one that effects your ability to amount a defense,
18 but go ahead, Mr. Kushner, if you will, please, and make
19 sure you speak clearly and loudly and slowly into the
20 microphone.

21 MR. KUSHNER: All right. So the issue isn't --

22 THE DEFENDANT: Thank you for summarizing that,
23 sir.

24 THE COURT: Pardon me?

25 THE DEFENDANT: Thank you for summarizing that.

1 THE COURT: Yes.

2 MR. KUSHNER: So the issue is in paragraph 5 of
3 the Order. And it has a provision that only allows the
4 defendant to review protected information in the presence of
5 his attorney. I have a problem with that in general, but
6 it's absolutely impossible to carry out now in any event
7 because the jail isn't allowing any contact visits, so we'll
8 need to delete that provision.

9 THE COURT: Or we'll need to address it in one
10 fashion or another whether it's through the definition of
11 presence or what have you, but why don't you two confer and
12 then if there's an issue that the Court needs to resolve,
13 I'll resolve it, okay?

14 MR. WINTER: Thank you, Your Honor.

15 THE COURT: Okay. Anything further, Mr. Kushner?

16 MR. KUSHNER: Nothing further at this time.

17 THE COURT: Okay. Thank you. All right, go ahead
18 and be seated.

19 With that, if there's nothing else, we are in
20 recess. Okay? Thank you.

21 (Court adjourned at 1:55 p.m.)

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1 **REPORTER'S CERTIFICATE**

2 I, Maria V. Weinbeck, certify that the foregoing is
3 a correct transcript from the record of proceedings in the
4 above-entitled matter.

5

6 Certified by: s/ Maria V. Weinbeck

7 Maria V. Weinbeck, RMR-FCRR

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